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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE**
10 **NORTHERN MARIANA ISLANDS**

11 **U.S. EQUAL EMPLOYMENT**
12 **OPPORTUNITY COMMISSION,**

13 Plaintiff,

14 v.

15 **L & T INTERNATIONAL**
16 **CORPORATION, L&T GROUP OF**
17 **COMPANIES, LTD., TAN**
18 **HOLDINGS CORPORATION, TAN**
19 **HOLDINGS OVERSEAS**
20 **INCORPORATED, CONCORDE**
21 **GARMENT MANUFACTURING**
22 **CORPORATION, and DOES 1-5,**
Inclusive,

Defendants.

Case No. CV 07-0029

COMPLAINT-IN-INTERVENTION
OF PLAINTIFFS-INTERVENORS

DEMAND FOR JURY TRIAL

1. ABELLANOSA, JOANNA
2. ALVARADO, MARISSA
3. ANTATICO, NORA
4. APIT, LOLY
5. AQUINO, RUSSEL
6. ARANDA, MARLOU
7. ARCEGA, PRECILLA
8. ASIA, ANGELITA
9. BAAY, CRISTINA

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- 1 10. BALBIDO, MARISSA
11. BALCITA, AMALIA
- 2 12. BALICHA, ESTELITA, E.
13. BANAAG, EVELYN
- 3 14. BANGUILAN, TERESITA
15. BANTILLO, DELMA
- 4 16. BASTO, ZENAIDA
17. BAUTISTA, CONSOLITA
- 5 18. BERNARDINO, EVA
19. BUTIC, TERESITA
- 6 20. CABANIT, ANASTACIA
21. CAPACITE, EMERITA
- 7 22. CARAIT, RUBY
23. CAVA, MARITA
- 8 24. CHAVEZ, EVANGELINE
25. CONCEPCION, ANDREA
- 9 26. CONTEMPLACION, NELIDA
27. CORREA, HAIDE
- 10 28. CRUZ, HELEN
29. CRUZ, AGNES
- 11 30. DELA CRUZ, MA. ROSARIO
31. DELOS SANTOS, ELENA
- 12 32. DOMINE, CORAZON
33. DUGAY NOMIELADA
- 13 34. FAJARDA, AMELITA
35. GADIANE, MARILYN
- 14 36. GASES, NENITA
37. GELERA, EIREEN
- 15 38. GONZALES, GUADALUPE
39. HERNANDEZ, WENDELIN
- 16 40. INOPIQUEZ, ROSALINDA
41. LADIA, VICTORIA
- 17 42. LEJANO, ANGELA
43. LOZANO, NELIA
- 18 44. MACLANG, MARIDETH
45. MAGNAYE BEATRIZ
- 19 46. MANZANILLA, EDELITA
47. MATEO, MARLA
- 20 48. MENDOZA, BELINDA
49. MIRANDA, AMALIA
- 21 50. MOLINA, ELIZABETH

1 51. MONSALUD, EVA
2 52. NABOR, CELESTINA
3 53. NAVIDA, MARICHU
4 54. NIMO, EULALIA
5 55. NIPAYA, LEONILA
6 56. NISPEROS, JENITA
7 57. NUEVA, MARITES
8 58. OLERMO, RUBY
9 59. PANGAN, MARITA
10 60. PANGELINAN, TERESITA
11 61. PASCUA, DYNA
12 62. PASCUAL, MYRNA
13 63. PELIGRINO, ADORACION
14 64. PERFECTO, CHARITO
15 65. POMAREJOS, GLORIA
16 66. QUIPOT, MERCIA
17 67. RELEVANTE, ADORA MAE
18 68. REYES, AMELIA
19 69. SALVADOR, JANNA
20 70. SAPIANDANTE, MILA
21 71. SORIANO, MARIETTA
22 72. TAPIADOR, TERESA
73. TEBERIO, JESSICA
74. TOBIAS, JOCELYN
75. VALDOZ, SHEROWIN
76. VILLANUEVA, MARIBEL,

Plaintiffs-Intervenors,

v.

L&T INTERNATIONAL
CORPORATION, L&T GROUP OF
COMPANIES, LTD., TAN
HOLDINGS CORPORATION, TAN
HOLDINGS OVERSEAS
INCORPORATED, CONCORDE
GARMENT MANUFACTURING
CORPORATION, and DOES 1-5,

Defendants.

1 **NOW COME** Plaintiffs-Intervenors, Abellanos et al.,^{1/} (“Intervenors”),
2 by and through counsel, and as their claims and causes of action against
3 Defendants allege and aver as follows:
4

5 **I.**
6 **NATURE OF THE ACTION**

7 1. This is a civil rights action to redress the deprivation of rights accorded
8 to Intervenors pursuant to the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.,
9 and the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

10 2. The Intervenors are former employees of Defendants. Defendants, inter
11 alia, unlawfully discriminated against Intervenors, terminated their employment,
12 unlawfully segregated them and provided them with fewer overtime hours than
13 Defendants’ Chinese employees, by segregating Intervenors and denying health
14 benefits to Intervenors, because of and based on Intervenors’ national origin,
15 Filipino.
16

17 3. Defendants’ said employment practices and actions were willful and
18 intentional and Intervenors bring this suit seeking, inter alia, declaratory relief, lost
19 earnings, wages, compensatory and punitive damages and other appropriate
20

21 ^{1/} The seventy-six (76) Intervenors are named and listed individually in Appendix
22 “A” hereto which is hereby incorporated by this reference as though fully set forth herein.

1 equitable and legal relief as may be deemed necessary and proper to compensate
2 Intervenor.

3
4 **II.**
PROCEDURAL REQUIREMENTS

5 4. Each Intervenor duly and timely filed charges of discrimination with the
6 Equal Employment Opportunity Commission (EEOC), thereby satisfying the
7 requirements of 42 U.S.C. §2000e-5(b)(e). Said charges were filed within one
8 hundred and eighty (180) days of Defendants' unlawful employment practices. All
9 conditions precedent to bringing and filing this action have been met.

10 5. On or about August 28, 2006, the EEOC, after investigation, issued a
11 Determination with respect to the charges against Defendants. The EEOC
12 "determined that Respondent discharged Charging Party and a class of non-
13 Chinese employees . . . because of their national origin." A representative copy of
14 the Determination (Abellanos's) is attached as **Exhibit "1"** hereto.

15 6. Following the Determination referenced above, the EEOC attempted
16 to eliminate the unlawful employment practices by informal methods of
17 conference, conciliation and persuasion pursuant to 42 U.S.C. 2000e-5(b), but it
18 was unable to secure a conciliation agreement.

19 7. On September 12, 2007, the EEOC filed a Complaint with this Court
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21
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1 against Defendants alleging, inter alia, that Defendants “unlawfully discriminated
2 against them and terminated the employment of the Charging Parties because of
3 their national origin, Filipino . . .” and further “unlawfully discriminated against the
4 Charging Parties by segregating them by their national origin and providing them
5 with fewer overtime hours than Chinese employees.”

6
7 8. The Intervenors seek to intervene in the proceedings commenced by the
8 EEOC, pursuant to Section 706(f)(1) and (3) of Title VII, 42 U.S.C. §2000e-5(f)(1)
9 and (3) and Rule 24 of the Federal Rules of Civil Procedure.

10
11 **III.**
12 **JURISDICTION AND VENUE**

13 9. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331,
14 1337, 1343(3) and 1343(4), which confer original jurisdiction upon this Court in
15 a civil action to recover damages or to secure equitable relief under any act of
16 Congress providing for the protection of civil rights.

17 10. Jurisdiction is also conferred upon this Court pursuant to Section 706(1)
18 and (3) and 707 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.
19 § 2000e-5(f)(1) and (3), and -6, and Section 102 of Title I of the Civil Rights Act
20 of 1991, 42 U.S.C. § 1981a.
21

1 11. This action is also brought under the Fair Labor Standards Act, 29
2 U.S.C. §§ 201 et seq., (hereinafter designated as “FLSA”) made applicable to this
3 action by the COVENANT TO ESTABLISH A COMMONWEALTH OF THE
4 NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE
5 UNITED STATES OF AMERICA, Article V, § 502(a). Jurisdiction is conferred
6 upon this Court pursuant to Section 16(b) of the FLSA, 29 U.S.C. Section 216(b).
7

8 12. The Court is granted jurisdiction over Intervenor’s FLSA claims under
9 28 U.S.C. § 1331 (federal question jurisdiction), and as proceedings arising under
10 an Act of Congress regulating commerce pursuant to 28 U.S.C. § 1337(a).

11 13. The Court has jurisdiction over Intervenor’s wage claims pursuant to
12 29 U.S.C. § 216(b) and Section 207(a) as amended.

13 14. The Court’s authority to issue declaratory relief in this action is
14 conferred by 28 U.S.C. § 2201 and 2202.

15 15. The Court’s jurisdiction over Intervenor’s state law claims is granted
16 pursuant to 28 U.S.C. § 1367(a) (supplemental jurisdiction).
17

18 16. Venue is properly placed in this United States District Court for the
19 Commonwealth of Northern Mariana Islands (CNMI) in that at pertinent times,
20 the parties were present and resided in, and the substantive acts alleged herein
21

1 occurred in the CNMI.

2
3 **IV.**
PARTIES AND CAPACITIES

4 17. Plaintiff Equal Employment Opportunity Commission (“EEOC”) is
5 a federal agency created pursuant to Section 705 of the Civil Rights Act of 1964,
6 42 U.S.C. § 2000e-4. The EEOC is authorized to bring this action pursuant to 42
7 U.S.C. § 2000e-5(f)(1).

8 18. Intervenor are, each and all, citizens of the Philippines and, at all
9 relevant times, resided in the CNMI and were employed by or suffered to work by
10 Defendants variously pursuant to contracts partly in writing and partly oral, for
11 a fixed period of employment of one (1) year to two (2) years each, pursuant to
12 the Nonresident Workers Act (NWA), 3 N.Mar.I.Code § 4411, *et. seq.*

14 19. Intervenor, at all pertinent times, were employed and worked as
15 “packager hand” of garments by and for Defendants in an enterprise engaged in
16 commerce and the production of goods for interstate and international commerce,
17 such that garments worked on and made by Intervenor were shipped by
18 Defendants in interstate and international commerce from the CNMI to various
19 places in the United States of America and other countries.

20 20. Each of the Intervenor was hired by and commenced work as
21

1 “packager hand” for Defendants on different dates in February 2004 and March
2 2004 and they were terminated by Defendants on or about May 12, 2004.

3 21. Defendant L&T International Corporation, at all pertinent times, was
4 a domestic CNMI corporation with its head office and factory located in Saipan,
5 CNMI, whose primary business was the production of garments for interstate and
6 international trade and distribution and sale outside of the CNMI and was and is
7 engaged in the business of production of goods for and shipment in, interstate
8 and international commerce and plaintiffs-intervenors performed work on said
9 products and garments.
10

11 22. At all relevant times, Defendant L&T International Corporation was
12 a CNMI corporation doing business in the CNMI and was continuously an
13 employer of Intervenors and had at least fifteen (15) employees at all pertinent
14 times. And at all relevant times, said Defendant L&T was continuously an
15 employer engaged in an industry affecting commerce within the meaning of
16 Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).
17

18 23. At all pertinent times, Defendant L&T Group of Companies, Ltd.,
19 was a CNMI corporation doing business in the CNMI and continuously
20 employed at least fifteen (15) employees at all pertinent times. And at all pertinent
21

1 times, Defendant L&T Group of Companies Ltd., was an employer engaged in
2 an industry affecting commerce within the meaning of Sections 701(b), (g) and (h)
3 of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

4 24. At all pertinent times, Defendant Tan Holdings Corporation was a
5 CNMI corporation doing business in the CNMI and continuously employed at
6 least fifteen (15) employees at all pertinent times. And at all relevant times,
7 Defendant Tan Holdings Corporation was an employer engaged in an industry
8 affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title
9 VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

11 25. At all pertinent times, Defendant Tan Holdings Overseas
12 Incorporated, on information and belief, was a CNMI corporation doing business
13 in the CNMI and continuously employed at least fifteen (15) employees at all
14 pertinent times. And at all relevant times, Defendant Tan Holdings Overseas
15 Incorporated was an employer engaged in an industry affecting commerce within
16 the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g)
17 and (h).

19 26. At all pertinent times, Defendant Concorde Garment Manufacturing
20 Corporation was a CNMI corporation doing business in the CNMI and
21

1 continuously employed at least fifteen (15) employees at all pertinent times. And
2 at all relevant times, Defendant Concorde Garment Manufacturing Corporation
3 was an employer engaged in an industry affecting commerce within the meaning
4 of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

5
6 27. Intervenor is not aware or sure of the identities, true names and
7 capacities of Defendants sued as DOES 1 through 5, herein and therefore
8 Intervenor sue said Defendants by such fictitious names with reservation to
9 amend the complaint to name said DOE defendants individually or corporately
10 as they become known. Intervenor allege that each of the Defendants named as
11 DOES was in some manner responsible for the acts and omissions alleged herein
12 and Intervenor will amend their complaint to identify and allege the
13 responsibility of said Does when ascertained and clearly known.

14
15 28. Additionally, on information and belief, Intervenor allege that said
16 defendant Does 1-5, are variously alter egos, joint employers, and/or integrated
17 enterprises of Defendant L&T International Corporation.

18
19 29. All of the acts and failures to act alleged herein were duly performed
20 by and attributable to all Defendants, each acting as successor, agent, joint
21 employer, integrated enterprise, employee and/or under the direction and control
22

1 of the other Defendants, except as otherwise specifically alleged. Said acts and
2 failures to act were within the scope of such agency and/or employment, and
3 each Defendant participated in, approved and/or ratified the unlawful acts and
4 omissions by the other Defendants complained of herein. Whenever and
5 wherever reference is made in this Complaint to any act by a Defendant or
6 Defendants, such allegations and reference shall also be deemed to mean the act
7 and failures of each Defendant acting individually, jointly, and/or severally.

9 30. Defendants were employers of each Intervenor at pertinent times
10 herein, within the meaning of FLSA Section 203(e)(I).

11
12 **V.**
FACTUAL BACKGROUND

13
14 **A.**
The Recruitment Process

15 31. Between January 2004 to March 2004, Defendants, through
16 newspaper and other media, recruited and advertised for persons to work as
17 “packager hand.”

18 32. The Intervenors, who either read Defendants’ job advertisement(s),
19 learned through the media and/or were informed by others about said job
20 openings, responded and applied for said jobs on various dates during said period.
21

1 (DOL) form entitled Declaration of Accepting Employer, executed and signed by
2 Defendants and each of the said-certain Intervenor. Attached as **Exhibit "2"**
3 hereto and incorporated herein by this reference is a list of those twenty-five (25)
4 Intervenor hired by Defendants pursuant to conditional grants of transfer.
5 Attached as **Exhibit "3"** hereto and incorporated herein by this reference, is a
6 copy of the standard DOL "Conditional Grant of Transfer" form executed by
7 said Intervenor.

9 37. At the time Defendants recruited and hired those Intervenor listed in
10 Exhibit "2" under conditional grants of transfer, said Intervenor had the legal
11 right to transfer and to seek and secure other employment for yet an unexpired
12 number of days.

13 38. At said time, Intervenor variously were either actively seeking other
14 employment, and/or had pending employment applications with other employers.
15 At the time Defendants promised to hire each said Intervenor, they (workers)
16 variously each had a number of days remaining under their transfer authorization
17 in which to seek other employment. In reasonable reliance on Defendants'
18 promised employment, said Intervenor were caused to give up and forego use
19 of their remaining transfer time and/or to seek other or more secure employment
20

1 in the time remaining under their transfer authorization.

2 39. Certain of the Intervenor were authorized to work for Defendants by
3 DOL's approval of Consensual Grant of Transfer agreements between the
4 workers, their previous employers and the new employer, Defendants. Attached
5 as **Exhibit "4"** hereto and incorporated herein by this reference is a list of those
6 fifty-one (51) Intervenor hired by Defendants pursuant to consensual grants of
7 transfer.
8

9 40. At the time, Defendants recruited and hired those Intervenor listed
10 in Exhibit "4" under consensual grants of transfer, said Intervenor were
11 working and had lawful annual employment contracts with their then existing
12 employers.

13 41. Defendants, through their agents, knew that Intervenor were so
14 employed and requested that Intervenor quit those jobs and come to work for
15 Defendants.
16

17 42. Because of the assurances and representations made by Defendants
18 and their agents, that Intervenor would be hired and given stable, full-time work
19 and employment for at least one year, Intervenor were induced to and
20 reasonably relied on Defendants and their agents' promise of secure employment
21

1 for one to two years, in leaving their employer, for work with Defendants.

2 43. In entering into an employment relationship with Defendants and in
3 agreeing to forego other employment opportunities and to leave their then secure
4 employment in order to work for Defendants, each of the Intervenor listed in
5 Exhibits "2" and "4" reasonably relied on said representations of Defendants of
6 full time work for not less than one (1) year with the prospect of renewal for an
7 additional year. In so relying and agreeing Intervenor sought to obtain financial
8 stability, peace of mind, and future employment security with Defendants.
9

10 44. At all material times, Defendants, through their agents, assured and
11 represented to each Intervenor that they would be given stable employment and
12 work annually as long as they performed satisfactorily and obeyed all reasonable
13 and lawful directions, rules and regulations of Defendants.

14 45. Defendants knew at the time of recruiting/contracting with, and at
15 the time of termination, that each Intervenor was female, an alien, and a citizen
16 of the Republic of the Philippines.
17

18 46. Defendants knew that as alien contract workers, each Intervenor's
19 ability and right to remain/reside in the CNMI, was dependent on Intervenor's
20 maintaining and having a DOL approved employment contract and an employer.
21

1 47. Defendants knew that if they terminated Intervenor(s) prior to the
2 natural expiration date of their contract(s) that Intervenor(s) would not be able to
3 stay or reside in the CNMI unless they were able to get transfer authorization
4 from DOL and timely obtain another annual contract employer.

5 48. Defendants knew or upon reasonable inquiry should have known, at
6 the time of the May 12, 2004 termination, that: (a) the economy and job market
7 in the garment related industry was and had for sometime been, on a down turn;
8 (b) that there were then a surplus and large numbers of unemployed garment-
9 related alien workers listed with the DOL Employment Services unable to be
10 placed by the agency and unable to find work; (c) that Defendants, on
11 information and belief, prior to termination, made no effort to contact and ask
12 other employers if they could employ any of the plaintiffs; (d) Defendants thus
13 knew or, upon reasonable inquiry, would or should have known that by
14 deliberately choosing to terminate all 76 Intervenor(s) *en masse* and dumping them
15 in the CNMI unemployment pool at one time, that each Intervenor's chance of
16 finding and obtaining new employment in their job category ("packager hand")
17 would be exacerbated and rendered more difficult and unlikely, such that
18 Intervenor(s) have because of Defendants' actions and omissions, been unable to
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22

1 find or secure other contract employment.

2 **C.**

3 **Physical Examination and Health Clearance Fees**
4 **Required by Law to be Paid/Provided by Employer**

5 49. Defendants, by and through their employee and agent, Baby Lopez,
6 required and demanded as a condition to contracting with, hiring, and continuing
7 employment of each Intervenor with Defendants, that each Intervenor must
8 provide for and/or pay their physical examination and health clearance fees.
9 Implicit in this demand and condition was that Intervenor would not be hired
10 or continued in employment unless Intervenor agreed to and provided for or
11 paid for said examination and health fees.

12 50. As an inducement for each Intervenor agreeing to provide or pay for
13 their said first year examination and health clearance fees, Defendants, by and
14 through their agents, and Ms. Lopez, promised and represented to each
15 Intervenor that Defendants would pay for each Intervenor's physical examination
16 and health clearance fees, beginning with their second year of employment with
17 Defendants. Implicit in said representation was that Intervenor would have and
18 would be given employment and work during the first year of their respective one
19 (1) year contracts and that thereafter Intervenor would be renewed unless
20

1 Intervenor were terminated for good cause.

2 51. In committing and making the above described acts, promises,
3 statements, and omissions, Defendants' agents and Ms. Lopez were acting as
4 agents of Defendants and within the scope of their authority or on the express
5 instruction and direction of Defendants and/or Defendants ratified said acts,
6 conduct and omissions.

7
8 52. Defendants made the aforesaid promises and representations through
9 their agents, including Ms. Lopez or ratified the same for the purpose of inducing
10 each Intervenor to accept employment with and to work for Defendants for
11 Defendants' benefit, and to take advantage of each Intervenor's experience,
12 expertise, and labor.

13 53. As a result of Defendants' and their agent's representations and
14 promises, each Intervenor was reasonably led to believe, rely on and understand
15 that they would be renewed and employed with Defendants for a minimum of
16 one (1) year and that their contract would be renewed for a second term of one
17 year upon expiration.

18
19 54. Each Intervenor accepted employment with Defendants in reliance
20 upon Defendants' representations and implicit promise that Intervenor would
21

1 be renewed at the end of their first year contract, if Intervenor's work
2 performance were satisfactory and Intervenor were not terminated for good
3 cause.

4 55. Based on said Defendants' and their agents' representations and
5 promises of continued employment and employment renewal, each Intervenor
6 reasonably relied thereon and were led to believe that they would be renewed and
7 employed by Defendants for a minimum of one (1) full year .

9 56. Certain of the Intervenor in reliance on said representations and
10 promises of Defendants and their agents, paid for both their physical examination
11 and health clearance fees in reliance on and believing their employment would be
12 for a full year's work. Attached as **Exhibit "5"** hereto and incorporated herein
13 by this reference is a list of those Intervenor who paid both their said physical
14 examination and health clearance fees.

15 57. Certain of the Intervenor, in order to obtain employment with
16 Defendants, and relying on their said representations and promises, paid their
17 own physical examination fees. Attached as **Exhibit "6"** hereto and incorporated
18 herein by this reference is a list of those Intervenor who paid either their physical
19 examination fee or their health clearance fee.
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21
22

1 58. Certain of the Intervenor, in order to obtain employment with
2 Defendants were required by Defendants and their agents to use their then yet
3 valid health clearance certificates from their previous employment, in lieu of the
4 employer, Defendants, paying for said cost and fees. Attached as **Exhibit "7"**
5 hereto and incorporated herein by this reference is a list of those Intervenor
6 required by Defendants to so use their own previously obtained health clearance
7 certificates.
8

9 59. On information and belief, a majority of the workers employed by
10 Defendants are Chinese nationals and citizens but their contracts and
11 employment were and are not so conditioned on said Chinese workers providing
12 or paying for said physical examination and health certificate fees, as those of the
13 Intervenor. Furthermore, on information and belief, there are no other
14 employees of Defendants whose employments or contracts were and are so
15 conditioned, except for Intervenor who are Filipino nationals and citizens.
16

17 60. Defendants and their agents' acts in requiring Intervenor to pay for
18 or shoulder the costs of physical examination and/or health certificates were in
19 violation of CNMI law and the public policy of the Commonwealth.

20 61. On information and belief, Defendants, as required by the NWA,
21
22

1 executed with the Director of Labor, covering each Intervenor, an Employer's
2 Non-Resident Worker Agreement, to which each Intervenor is a third-party
3 beneficiary. Attached as **Exhibit "8"** hereto and incorporated herein by this
4 reference is a standard form of said Non-Resident Worker Agreement.

5 62. Under the said third-party beneficiary agreement, Defendants shall
6 inter alia, be "[r]esponsible for the repatriation and medical expenses, as well as
7 all other expenses required by law of any nonresident worker to be employed or
8 employed under this Agreement until the worker leaves the Commonwealth . . .,"
9 which includes said physical examination and health clearance fees.

10 63. The said third-party beneficiary agreement also requires Defendants
11 to provide each plaintiff a minimum of forty (40) hours of work per week, at all
12 times, for the duration of each Intervenor's respective employment contract.
13

14
15 **D.**
16 **Defendants' Restrictive, Oppressive and**
17 **Unconscionable Employment Contracts**

18 64. Each Intervenor and Defendants executed and entered into written
19 employment contracts for a term of one (1) year.

20 65. Under their respective contracts, Defendants promised to pay each
21 Intervenor \$3.05 per hour and time and a half for overtime work, payable bi-

1 weekly.

2 66. The said employment contracts contained restrictive, oppressive and
3 unconscionable provisions and language prohibiting Intervenors from being
4 employed after termination by Defendants, as follows:

5
6 “The employee further agree that he/she will not, without the
7 consent of the Company in writing first obtained, for a period of
8 one year after his/her employment ceases either by resignation,
9 termination, expiration of permit, or other causes, enter the employ
10 of or render services to any person, firm, partnership, or
11 corporation dealing in products or services which compete with any
12 products of or services of L&T or engage in any competing business
13 on his/her own account or become interested therein as director,
14 principal, representative, employee or in any relationship or
15 capacity.” (emphasis added)

16
17 A representative copy of the contract form used (Abellanos’s) is attached
18 as **Exhibit “9”** hereto.

19 67. The existence and application of the said oppressive covenant, coupled
20 with the fact that Defendants, prior to and at the time of termination, had not
21 given any written release/consent from the application of this restrictive
22 provision, caused each Intervenor to reasonably believe thereafter they could not
seek employment from other garment related companies and/or that other
potential employers would not hire them because of such contract restrictions.

1 Intervenor were thus caused great and severe anxiety, severe mental anguish,
2 suffering and distress , upon being terminated *en masse*.

3 68. The said referenced employment contract(s) was a form contract and,
4 a contract of adhesion, prepared and drafted in advance by Defendants and/or
5 their counsels and presented to each Intervenor on a take it or leave it basis
6 without negotiation or opportunity for review or consultation with counsel by
7 Intervenor and without opportunity for translation from English to a
8 language/dialect spoken and understood by Intervenor, prior to signing.
9
10

11 **E.**
12 **Defendants' Unlawful Termination and**
13 **Replacement of Intervenor with Chinese Workers**

14 69. Intervenor pursuant to their agreements with Defendants, partly oral
15 and partly written, and the grants of transfer approved by DOL, commenced
16 employment with Defendants on various dates between February 2004 and March
17 2004.

18 70. Approximately two (2) months after the last Intervenor began work
19 in March 2004, by letter dated May 12, 2004, (but not given to Intervenor until
20 May 13, 2004) Ma. Luisa Dela Cruz-Ernest, as the Human Resources Manager
21
22

1 and agent of Defendants, gave each Intervenor a document on L&T Group of
2 Companies, Inc. stationery-letterhead entitled "Notice of Termination" based on
3 the stated ostensible grounds and reasons of "due to the on-going re-engineering
4 and reduction in force due to economic necessity." Attached as **Exhibit "10"**
5 hereto and incorporated herein by this reference is a representative copy of the
6 said termination notice.

7
8 71. Defendants terminated Intervenor *en masse*, without individualized
9 considerations of the legal rights, status, and condition of each Intervenor under
10 their respective contracts, without and in contravention of each Intervenor's
11 rights to due process. Furthermore, Defendants did not consider or interview
12 each Intervenor about their respective qualifications for other jobs and positions
13 available through L&T, its affiliates and sister companies including Tan Holdings
14 Corporation, and did not in good faith explore other alternatives to firing
15 Intervenor.

16
17 **F.**
18 **L&T's Post-Termination Oppressive,**
19 **Injurious and Outrageous Conduct**

20 72. On information and belief, Defendants, after Intervenor's termination,
21 used other Chinese employees to do packing work previously done by
22

1 Intervenor, and/or hired and brought into the CNMI new Chinese workers
2 from the People's Republic of China to fill various positions in the Defendants'
3 companies, their subsidiaries, and other garment factories affiliated with, owned
4 or controlled by Defendants or their parent company, Tan Holdings.

5 73. Shortly after Defendants terminated their employment, each of the
6 Intervenor, in order to support themselves and to mitigate damages resulting
7 from their unlawful termination, started to look for other employment.

8 74. On various occasions after their May 13, 2004 termination, certain
9 Intervenor went to the Public Health Liaison Office at the DOL Building in San
10 Antonio to obtain their health clearance certificates then needed by all
11 Intervenor to facilitate and support their employment application(s) with new
12 prospective employers.

13 75. The Public Health Liaison Office refused to release to Intervenor
14 their health clearances, explaining that Defendants had instructed their office not
15 to release Intervenor's health clearance to any of the Intervenor.

16 76. As a result of L&T's interference with Intervenor's right to have and
17 secure their health certificates subsequent to having terminated Intervenor, by
18 having the Public Health Liaison Office not to release the certificates, Defendants
19
20
21

1 unreasonably interfered with Intervenor's opportunity to obtain other
2 employment and thereby caused Intervenor's severe emotional distress.

3 77. Since Defendants had initially required and demanded, contrary to
4 law, that Intervenor's pay for their health certificates and/or use the health
5 certificates obtained by Intervenor's from their prior (now terminated) employers,
6 Defendants' conduct after prematurely and without good cause terminating
7 Intervenor's, in refusing to promptly return/release Intervenor's health certificates,
8 was outrageous, especially when considered in light of Defendants' special
9 relationship and higher duty owed to their employee-intervenor's as their
10 employer.
11

12 **VI.**
13 **CAUSES OF ACTION**

14 **First Cause of Action**
15 **(Defendants Discriminated Against Intervenor's by Terminating**
16 **their Employment Because of their National Origin)**

17 78. The allegations in paragraphs 1 through 77 are re-alleged and
18 incorporated by reference in this First Cause of Action.

19 79. Defendants intentionally discriminated against Intervenor's in violation
20 of Title VII of the Civil Rights Act of 1964 by intentionally and unlawfully
21 terminating their employment because of their national origin.
22

1 **Second Cause of Action**
2 **(Defendants Discriminated Against Intervenors by**
3 **Segregating them from Chinese Employees and by Denying**
4 **them Access to Defendants' Meal Plan and Cafeteria, Because**
5 **of their National Origin)**

6 80. The allegations in paragraphs 1 through 79 are re-alleged and
7 incorporated by reference in this Second Cause of Action.

8 81. Defendants discriminated against Intervenors in violation of Title VII
9 by segregating them from other employees in their work units and refusing them
10 access to the cafeteria and meal plan provided to Chinese employees, because of
11 their national origin.

12 **Third Cause of Action**
13 **(Defendants Discriminated against Intervenors**
14 **by Providing Filipino Workers with Fewer Overtime Hours**
15 **than Chinese Workers, Because of their National Origin)**

16 82. The allegations in paragraphs 1 through 81 are re-alleged and
17 incorporated by reference in this Third Cause of Action.

18 83. Defendants discriminated against Intervenors by providing them with
19 fewer overtime hours than their Chinese employees by limiting Intervenors to a
20 set two (2) hours weekly overtime, while Chinese workers were not so limited as
21 to overtime and routinely worked and were given substantially more overtime
22 hours than Intervenors each week, because of their national origin.

1 nonresident workers.

2 88. At all relevant times herein, Defendants were required by the Non-
3 Resident Worker Agreement to which each Intervenor is a third-party
4 beneficiary, to be responsible for payment of each Intervenor's physical
5 examination and health clearance fees which are employer expenses.

6 89. Each Intervenor was, inter alia, required to either pay or provide for,
7 her physical examination fees or health clearance fee or both, by Defendants, as
8 set forth in Exhibits "5," "6" and "7" attached hereto.

9 90. Notwithstanding, Defendants shifted their burden and obligation to
10 pay or provide for said examinations and fees to Intervenors by requiring that
11 Intervenors pay for or provide said services as a condition to their employment.

12 91. Defendants' failure and refusal to pay for or provide the physical
13 examination and health clearance fees of Intervenors was in breach of contract
14 and of the specific promise of Defendants to pay said fees as set forth in the
15 Non-Resident Worker Agreement between Defendant and the Director of Labor.

16 92. Defendants' failure and refusal to pay the physical examination and
17 health clearance certificate fees of Intervenors, was a breach of their respective
18 employment contracts and the Employer's Agreement executed by Defendants
19
20
21

1 and the Director of Labor of which Intervenor are third-party beneficiaries, and
2 constituted a violation of Section 4438(b) of the NWA.

3 93. Defendants are thus liable to Intervenor for the amount or value of
4 the physical examination fees and health clearance fees paid by Intervenor, plus
5 prejudgment interest, and an additional amount as liquidated damages thereon
6 under the NWA.

7
8 **Sixth Cause of Action**
9 **(Defendants' Failure to Pay Full Wages**
10 **Violated FLSA , MSHA, and the NWA)**

11 94. The allegations in paragraphs 1 through 93 are re-alleged and
12 incorporated by reference in this Sixth Cause of Action.

13 95. As a result of Defendants requiring Intervenor to pay or provide for
14 their respective physical examination and health clearance fees, said Intervenor
15 received or were paid less than the minimum wage and overtime wages prescribed
16 under FLSA, MSHA and the NWA for the respective pay periods.

17 96. Alternatively, Defendants' acts in requiring Intervenor to pay or
18 provide said fees and services constitute and are deemed unauthorized deductions
19 from wages or kickbacks, resulting in each Intervenor being paid less than the
20 minimum wage and applicable overtime wage rate.

1 damages their full contract wages and other lost benefits under their employment
2 contracts had Intervenor been allowed to perform and work through the
3 unexpired term of their respective employment contracts, in an amount to be
4 proven at trial.

5
6 **Eighth Cause of Action**
7 **(Supplemental Claims for Breach of Express, Implied-in-Fact and**
8 **Implied-in-Law Covenants of Good Faith and Fair Dealing)**

9 102. The allegations in paragraphs 1 through 101 are re-alleged and
10 incorporated by reference in this Eighth Cause of Action.

11 103. Intervenor's employment contracts each contained express, implied-
12 in-fact and implied-in-law covenants of good faith and fair dealing that neither
13 party would do anything to prevent the other from performance under the
14 contract or to enjoy the benefits of the contract.

15 104. In terminating Intervenor without good and valid cause as herein
16 described, Defendants acted in bad faith and breached said covenants of good
17 faith and fair dealing of the contracts, with the intent of depriving Intervenor of
18 the benefits that each Intervenor reasonably expected to receive under their
19 respective employment contracts.

20 105. As a direct and proximate result of Defendants' actions and conduct,
21
22

1 Intervenor's suffered substantial and severe economic loss in benefits and wages
2 under their contract.

3 106. Alternatively, the promises and representations of Defendants and
4 their agents described herein constituted a representation and promise by
5 Defendants that each Intervenor would be employed and given work for one full
6 year, and that thereafter the contracts would be renewed for an additional year.
7

8 107. Defendants, their agents and employees, in representing and telling
9 Intervenor's that if Intervenor's paid or provided for their medical examination and
10 health certificate fees for the first year, that the Defendants' company, would pay
11 said fees thereafter, beginning with the first renewal of their one-year contract,
12 made said promises and representations knowing or reasonably should have
13 known that Intervenor's would rely on said Defendants' promise and assurance
14 that each Intervenor's contract would be renewed for an additional year upon
15 expiration of the first year's contract.
16

17 108. Intervenor's did in fact so act in reliance on Defendants' promises and
18 representations to their detriment and damage.

19 109. Defendants' conduct and acts were done intentionally, maliciously,
20 and oppressively and in conscious disregard of Intervenor's rights and constituted
21

1 a willful breach of the express and implied covenants of good faith and fair
2 dealing of the contracts, thus, entitling each Intervenor to an award of special,
3 compensatory, consequential, and exemplary damages in an amount to be proven
4 at trial and an equitable and statutory award of attorney's fees.
5

6
7 **Ninth Cause of Action**
8 **(Supplemental Claim for Fraud and Deceit)**

9 110. The allegations in paragraphs 1 through 109 are re-alleged and
10 incorporated by reference in this Ninth Cause of Action.

11 111. At the time Defendants and their agents made said promises,
12 representations and executed the employment contract with Intervenors, they
13 knew or should have reasonably known that because of their ostensible "on
14 going re-engineering" and "reduction in force due to economic necessity", it
15 could not, or did not, want to or intend to employ Intervenors with full-time
16 employment of 40 hours a week for a basic term of one-year under an annually
17 renewable contract.

18 112. At all pertinent times, and prior to contracting with Intervenors,
19 Defendants were thus aware of their true economic condition and that they would
20 not be able to employ and provide work to Intervenors under their said contracts
21

1 for a term of one (1) year as shown in part by **Exhibits "11" and "12"** hereto.

2 113. Notwithstanding, Defendants, and their agents, with knowledge of
3 their economic and financial condition prior to and/or at the time of contracting,
4 represented and misrepresented to Intervenorors that they could reasonably rely on
5 and expect employment for at least one year, with a promise of renewal for an
6 additional second year with Defendants.
7

8 114. The representations and statements made by Defendants to
9 Intervenorors, through Defendants' agents, including Lopez, that beginning with
10 Intervenorors' second year or renewal contract, Defendants would pay each year
11 thereafter Intervenorors' medical examination and health certificate fees was false
12 when made or Defendants and Lopez failed to exercise reasonable care or
13 competence in communicating to Intervenorors that the company (Defendants)
14 intended and would pay said fees beginning with their first renewal contract.
15 Defendants and Lopez had the means to know, ought to have known or had the
16 duty to know that their statement and representation was not true, and was a
17 misrepresentation to Intervenorors. And Defendants knew or reasonably should
18 have known that Intervenorors may or would justifiedly rely on said representations
19 and promises to their detriment.
20
21
22

1 115. As the result of the said actions and conduct of Defendants,
2 Intervenor were caused and have suffered lost pay and benefits, mental pain and
3 anguish, loss of esteem, physical pain and suffering. The Intervenor therefore
4 seek and are entitled to compensatory and punitive damages, costs and an
5 equitable award of attorney's fees.

6 116. The foregoing described misrepresentations, deceit, failure to
7 communicate, acts, omissions and conduct of Defendants were deceitful,
8 fraudulent and were done willfully, maliciously, fraudulently, and with reckless
9 disregard for Intervenor's rights and with the intent and purpose that Intervenor
10 would reasonably rely thereon and Intervenor did so reasonably rely thereon to
11 their detriment.

12 117. As a result of Defendants' misrepresentation, fraud and deceit, each
13 Intervenor suffered damages, including but not limited to lost income, benefits,
14 special and consequential damages in an amount to be proven at trial.
15

16
17 **Tenth Cause of Action**
18 **(Claim for Declaratory Relief for Return Air Fare)**

19 118. The allegations in paragraphs 1 through 117 are re-alleged and
20 incorporated by reference in this Tenth Cause of Action.
21

1 119. Under the contract of each Intervenor, pursuant to the NWA, and
2 the Employer's Non-Resident Workers Agreement (Exhibit "8"), Defendants
3 are obligated to provide and pay for the repatriation expenses of each Intervenor
4 to their original point of hire in the Philippines.

5 120. Intervenors therefore seek and are entitled to a declaration of the
6 Court, of their rights and entitlement to have Defendants pay and provide for
7 their repatriation expenses to their point of hire in the Philippines.
8

9
10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Intervenors pray for relief as follows:

12 1. An award, order and judgment that Defendants' conduct as complained
13 of in the First, Second, Third, and Fourth Causes of Action are violative of
14 Intervenors' rights as protected by Title VII of the Civil Rights Act of 1961 and
15 the Civil Rights Act of 1991, and
16

17 a. Order Defendants to make the Intervenors whole by providing
18 appropriate lost earnings and benefits, with prejudgment interest, in an amount
19 to be determine at trial;

20 b. Award the Intervenors reasonable attorney's fees and costs, including
21

1 the fee and costs of experts, if any, incurred in prosecuting this action;

2 c. Award the Intervenor's compensatory and punitive damages to be
3 determined by the jury at the time of trial;

4 2. An order and award of compensatory damages and reimbursements of
5 fees paid or the reasonable costs of said physical examination and health
6 certificate fees, an equal amount as liquidated damages, prejudgment interest,
7 attorney's fees and costs, under the Fifth Cause of Action;

8 3. An award of compensatory damages, plus an equal amount as liquidated
9 damages, prejudgment interest, costs and reasonable attorney's fees under the
10 Sixth Cause of Action;

11 4. An award of compensatory damages for lost wages and benefits through
12 the unexpired term of each Intervenor's respective employment contract, in an
13 amount to be proven at trial, plus an equal amount as liquidated damages, costs
14 and reasonable attorney's fees, and prejudgment interest under the Seventh Cause
15 of Action;

16 5. An award of special, compensatory, consequential, and exemplary
17 damages in an amount to be proven at trial, an equal amount as liquidated
18 damages, prejudgment interest, costs, and an equitable award of reasonable
19
20
21

1 attorney's fees under the Eighth Cause of Action;

2 6. An award for lost wages, benefits, special, consequential, punitive
3 damages, and attorney's fees and costs in an amount to be proven at trial under
4 the Ninth Cause of Action;

5 7. For a declaration that Defendants are obligated to pay for the
6 repatriation expenses and costs of the repatriation of Intervenor under the
7 Tenth Cause of Action.

8 8. For temporary work authorization during the pendency of this matter;

9 9. For transfer relief; and

10 10. Such other and further relief as may be deemed proper at law and in
11 equity.
12

13 **DEMAND FOR JURY TRIAL**

14 The Intervenor request a jury trial on all questions of fact and claims
15 raised in this Complaint.
16

17 **SIGNED** this 23rd day of January, 2008.

18
19 /s/ _____

20 **JOE HILL**

21 Attorney for Plaintiffs-Intervenor
22